

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required.
A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT
CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #

317.05-032

STATE AGENCY NAME :

Finance and Administration

SERVICE CAPTION :

Discover Card Acceptance & Settlement

PROPOSED CONTRACTOR :

Discover Financial Services, Inc.

CONTRACT START DATE :

(if date is < 60 days after F&A receipt, attach required explanation)

5/1/2005

LATEST POSSIBLE END DATE :

(including ALL options to extend)

4/30/2010

TOTAL MAXIMUM COST :

(including ALL options to extend)

\$250,000

APPROVAL CRITERIA :

(select one)

☐

use of Non-Competitive Negotiation is in the best interest of the state

☒

only one uniquely qualified service provider able to provide the service

ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)

(1) description of service to be acquired :

To provide the ability for the State of Tennessee to accept payments via Discover credit cards at state facilities and on Tennessee.gov

(2) explanation of the need for or requirement placed on the procuring agency to acquire the service :

In order to provide Discover cards as a payment option at state parks and on Tennessee.gov, a contract that governs the rules relating to the acceptance and processing of Discover cards is required. The contract with Discover Financial Services, Inc. covers rules on the state acceptance of Discover cards, appropriate charges, settlement, payment, and problem resolution. Because the State can only contract with Discover to obtain these services, the contract must be procured on a non-competitive basis. The actual Discover charges are processed electronically through the Visa/Mastercard system. The Division of Accounts maintains a separate contract for this service that is competitively bid.

The Division of Accounts also maintains similar contracts with Diner's Club and American Express for card acceptance and settlement. These contracts are also procured on a non-competitive basis since there is a single corporate entity with which the State can contract for the acceptance and processing of each card type.

(3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used

to acquire it :

The State of Tennessee has contracted with Discover since May 1, 1995.

(4) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

Donna J. Jenkins, President, Sales

Discover Financial Services, Inc.

2500 Lake Cook Road, BB-2E

Riverwoods, Illinois 60015

(5) evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service :

There is only one corporate entity in the United States that offers such services, Discover Financial Services, Inc

(6) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(7) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(8) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

There are no alternative ways to establish this contract for the Discover Card Acceptance & Settlement. The alternative is to not offer the Discover card as a payment option to those procuring state services.

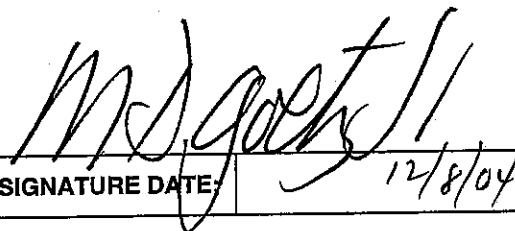
(9) justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

In order to provide the Discover card as a payment option to those procuring state services, a contract for acceptance and settlement with Discover Financial Services, Inc. is required.

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)

SIGNATURE DATE:


12/8/04



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF ACCOUNTS
312 EIGHTH AVENUE NORTH
SUITE 1400 WILLIAM R. SNODGRASS TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243
(615) 741-2140
FAX (615) 532-2332

DAVE GOETZ
COMMISSIONER

December 16, 2004

Jim White, Director
Fiscal Review Committee
G-19 War Memorial Building

☐ Attention: Chris Eaton

Re: Non-Competitive Contract with Discover Financial Services

Dear Mr. White,

Pursuant to Tennessee Code Annotated 12-4-109, a request to enter into a non-competitive contract with Discover Financial Services is submitted for review by the Fiscal Review Committee.

In order to provide Discover cards as a payment option at state parks and through the State Internet Portal, a contract that governs the rules relating to the acceptance and processing of Discover cards is required. Discover requires an entity to contract directly with it rather than through a bank to accept and process its cards. The contract with Discover covers rules concerning the State's acceptance of Discover cards, appropriate charges, settlement, payment, and problem resolution. Our current contract's term is May 1, 2000 to April 30, 2005. We would anticipate the maximum liability of the new five-year contract to be \$250,000 which would cover the appropriate Discover settlement charges.

Attached to this letter are the following:
Request for a Non-Competitive Contract
Copy of the current Discover contract

Your consideration of this request is greatly appreciated.

Sincerely,

Jan Sylvis, CPA
Chief of Accounts

Copy: Office of Contracts Review

CONTRACT SUMMARY SHEET

317.05-010		Contract Number:		FA-00-14182-01	
State Agency:		Finance and Administration		Division:	
				Accounts	
Contractor			Contractor Identification Number		
Discover Financial Services, Inc.			X	V-	364020792
				C-	

Service Description

To provide the ability for the state to accept payment for Discover credit cards at state facilities

Contract Begin Date		Contract End Date	
May 1, 2000		April 30, 2005	

Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
317.05	2007	083	12	on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)
2001			100,000		100,000
2002			100,000		100,000
2003			100,000		100,000
2004			100,000		100,000
2005			100,000		100,000
Total:	-	-	500,000	-	500,000

CFDA #		Check the box ONLY if the answer is YES:
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State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name:	Rhonda Hicks	Is the Contractor a VENDOR? (per OMB A-133)	
Address:	14th Floor 312 8th Ave N	Is the Fiscal Year Funding STRICTLY LIMITED?	
Phone:	741-9795	Is the Contractor on STARS?	X

Procuring Agency Budget Officer Approval Signature	Is the Contractor's FORM W-9 ATTACHED?	
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Is the Contractors Form W-9 Filed with Accounts?	X
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Funding Certification	
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Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.		
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COMPLETE FOR ALL AMENDMENTS (only)		
	Base Contract & Prior Amendments	This Amendment ONLY
END DATE →	04/30/05	04/30/05
FY: 2001	300,000	(200,000)
FY: 2002	200,000	(100,000)
FY: 2003	200,000	(100,000)
FY: 2004	200,000	(100,000)
FY: 2005	100,000	
Total:	1,000,000	(500,000)

RECEIVED
MAY 14 2003

RECEIVED
APR 29 2003

DIRECTOR OF ACCOUNTS

MANAGEMENT SERVICES

**AMENDMENT ONE
TO CONTRACT FA 00-14182-00
BETWEEN THE
STATE OF TENNESSEE, DEPARTMENT OF FINANCE & ADMINISTRATION
AND
DISCOVER FINANCIAL SERVICES, INC.**

This contract, by and between the State of Tennessee, Department of Finance and Administration, and Discover Financial Services, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Language: The Contractor's place of incorporation or organization is Illinois.

Replace this language with the following:

The Contractor's place of incorporation or organization is Delaware.

2. Delete Section C.1. Maximum Liability in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Hundred Thousand Dollars (\$500,000.00). This amount shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. The Contract Amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

3. Delete Section C.3. Payment Methodology in its entirety and insert the following in its place:

C.3. Payment Methodology. - For the period May 1, 2000 through April 30, 2003, the State agrees to pay a Merchant fee of 1.90% of the Net Sales. The State agrees to submit the Merchant fee upon receipt of an invoice submitted on a monthly basis by the Contractor in form and substance acceptable to the State and with all necessary supporting documentation, prior to payment.

Effective May 1, 2003 through April 30, 2005, the State agrees to pay a Merchant fee of 1.85% of the Net Sales. The State agrees to submit the Merchant fee upon receipt of an invoice submitted on a monthly basis by the Contractor in form and substance acceptable to the State and with all necessary supporting documentation, prior to payment.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

Approved as to Legal Form

Signature

Date

IN WITNESS WHEREOF:

DISCOVER FINANCIAL SERVICES, INC.:

Donna J. Jenkins
Donna J. Jenkins, Vice President, Sales

April 18, 2003
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr.
M. D. Goetz, Jr., Commissioner

4-24-03
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Metz, Jr. IPW
M. D. Goetz, Jr., Commissioner

APR 29 2003
Date

COMPTROLLER OF THE TREASURY:

John G. Morgan
John G. Morgan, Comptroller

4/30/03
Date

CONTRACT SUMMARY SHEET

Contract Number	<i>FA-00-14182-W</i>	State Agency	Finance and Administration
IS Number	317.05-003	Division	Accounts
		Vendor ID Number <i>12</i>	
Discover Financial Services, Inc.		<input checked="" type="checkbox"/> V— <input type="checkbox"/> C—	364020792

Service Description

To provide the ability for the state to accept payment for Discover credit cards at state facilities.

Contract Begin Date	Contract End Date
May 1, 2000	April 30, 2005

Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
317.05	2007	<i>063</i>	<i>12</i>	<input type="checkbox"/> on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including <u>ALL</u> amendments)
2000			\$100,000.00		\$100,000.00
2001			<i>Added</i> \$200,000.00		\$200,000.00 <i>200,000.00</i>
2002			\$200,000.00		\$200,000.00
2003			\$200,000.00		\$200,000.00
2004			\$200,000.00		\$200,000.00
2005			\$100,000.00		\$100,000.00
Total			\$1,000,000.00		\$1,000,000.00

<input type="checkbox"/>	Fiscal Year Funding Is Strictly Limited	CFDA Number	
<input checked="" type="checkbox"/>	Contractor is on STARS	State Fiscal Contact	
<input checked="" type="checkbox"/>	Current Form W-9 On File With Accounts OR <input type="checkbox"/> Form W-9 Attached	Name Address Phone	Nancy Blevins 20 th Floor, Snodgrass TN Tower 615-741-2590
<input checked="" type="checkbox"/>	Service Provider Registered with F&A	Procuring Agency Budget Officer Approval Signature	
<input type="checkbox"/>	Contractor is a SUBRECIPIENT (as defined by OMB Circular A-133)	<i>Michael Newman</i>	

COMPLETE FOR <u>ALL</u> AMENDMENTS (only)		
	Base Contract & Prior Amendments	This Amendment ONLY
Contract End Date		
FY		
FY		
FY		
FY		
Total		

Funding Certification

Pursuant to T.C.A., Section 9-6-113, I, C. Warren Neal, PhD., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

OCR Use Only

RECEIVED
 200 SEP - 5 AM 10:03
 COMPTROLLER'S OFFICE
 OFFICE OF
 MANAGEMENT SERVICES

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
Department of Finance and Administration
AND
Discover Financial Services, Inc.

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and Discover Financial Services, Inc., hereinafter referred to as the "Contractor," is for the provision of accepting and processing of the Discover credit card transactions, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation. The Contractor's address is:

2500 Lake Cook Road
Riverwoods, Illinois 60015

The Contractor's place of incorporation or organization is Illinois.

A. **SCOPE OF SERVICES:** The scope of services are defined in the "Governmental Entity/Utility Merchant Services Agreement" which is attached as Appendix A to this contract. If there is any conflict between the terms of the merchant services agreement and the terms of this Contract document, the latter will govern.

B. **CONTRACT TERM:**

B.1. **Contract Term.** This Contract shall be effective for the period commencing on May 1, 2000 and ending on April 30, 2005. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. **PAYMENT TERMS AND CONDITIONS:**

C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed One Million Dollars (\$1,000,000). This amount shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. The Contract Amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. **Compensation Firm.** The maximum liability of the State under this Contract is firm for the duration of the Contract and is not subject to escalation for any reason unless amended.

C.3. **Payment Methodology.** The State agrees to pay a Merchant fee of 1.90% of the Net Sales. The State agrees to submit the Merchant fee upon receipt of an invoice submitted on a monthly basis by the Contractor in form and substance acceptable to the State and with all necessary supporting documentation, prior to payment.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission in order to seek redress.
- D.3.a. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered.
- D.3.b. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.).
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Jack Hill, Director Office of Policy Development
Department of Finance and Administration
312 8th Avenue North, 16th floor
Nashville, Tennessee 37243
Phone: (615) 532-9612, Facsimile (615) 532-0471

The Contractor:

Vice President - Merchant Operations
Discover Financial Services, Inc.
2500 Lake Cook Road
Riverwoods, Illinois 60015
(847) 405-3296, FAX: (847) 405-4780]

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.4. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information provided to the Contractor by the State or acquired by the Contractor on behalf of the State whether verbal, written, magnetic tape, cards or otherwise shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.5. Factoring. Factoring is the submission of sales data regarding a Card sale made by another business not covered under this contract. This is considered a breach and may cause termination of the contract by the Contractor without notice and Card sales are subject to chargeback by the Contractor. The State agrees not to factor any Card sales.

E.6. Year 2000 Hold Harmless. As required by Tennessee Code Annotated, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times.

E.7. Assignment For Cause: The Contractor retains the right to assign this Contract to a direct or indirect parent, subsidiary or affiliate of Discover Financial Services, Inc. and notify the State after such assignment is made.

IN WITNESS WHEREOF:

DISCOVER FINANCIAL SERVICES, INC:

Mary Pappas

7/5/00

Mary Pappas, Group Relationship Manager, Government Relations

DATE

DEPARTMENT OF FINANCE AND ADMINISTRATION:

C. Warren Neel

7-16-00

C. Warren Neel, Commissioner

DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

C Warren Neel

09-01-2000

C. Warren Neel, Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan

9/6/00

John G. Morgan, Comptroller of the Treasury

Date